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C O N F I D E N T I A L STATE 284397

E.O. 11652: GDS

TAGS: ASEC AFSP MILI OGEN

SUBJECT: ALLEGED RAPE CASE INVOLVING EMBASSY MARINE

TELESFORO SANCHEZ

1. DEPARTMENT DOES NOT BELIEVE RECOMMENDATION FOR WAIVER OF DIPLOMATIC IMMUNITY OF SUBJECT SANCHEZ SHOULD BE ACTED UPON UNTIL FURTHER FACTS ARE AVAILABLE AND OTHER OPTIONS HAVE BEEN CONSIDERED.

2. BOTH THE USG AND THE GOG ARE PARTIES TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS DONE AT VIENNA APRIL 18, 1961. ARTICLE 31 PROVIDES THAT QUOTE A DIPLOMATIC AGENT
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SHALL ENJOY IMMUNITY FROM THE CRIMINAL JURISDICTION OF THE

RECEIVING STATE. END QUOTE PARAGRAPH 2 OF ARTICLE 37 PROVIDES THAT QTE MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF THE MISSION . . . SHALL, IF THEY ARE NOT NATIONALS OF OR PERMANENTLY RESIDENT IN THE RECEIVING STATE, ENJOY THE PRIVILEGES AND IMMUNITIES SPECIFIED IN ARTICLES 29 TO 35, EXCEPT THAT THE IMMUNITY FROM CIVIL AND ADMINISTRATIVE JURISDICTION OF THE RECEIVING STATE SPECIFIED IN PARA 1 OF ART 31 SHALL NOT EXTEND TO ACTS PERFORMED OUTSIDE THE COURSE OF THEIR DUTIES. END QTE. ART. 32 PROVIDES THAT QTE THE IMMUNITY FROM JURISDICTION OF DIPLOMATIC AGENTS AND OF PERSONS ENJOYING IMMUNITY UNDER ARTICLE 37 MAY BE WAIVED BY THE SENDING STATE UNQTE AND THAT THE QTE WAIVER MUST ALWAYS BE EXPRESS. UNQTE.

3. THE DEPT WISHES TO KNOW IF SUBJECT SANCHEZ WAS ACCREDITED TO THE GOG AND IF SO IF HE WAS ACCREDITED AS A MEMBER OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF THE MISSION. WHAT IS THE LANGUAGE OF THE DOCUMENTS BY WHICH THE SUBJECT WAS OR WAS NOT ACCREDITED? IN CASES IN OTHER COUNTRIES, MARINE GUARDS HAVE CONSISTENTLY BEEN FOUND TO BE MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF.

4. IN ADDITION DEPT NEEDS TO KNOW WHETHER THE AMBASSADOR BELIEVES IT LIKELY THAT THE SUBJECT SANCHEZ WOULD RECEIVE A FAIR TRIAL UNDER GENERALLY PREVAILING INTERNATIONAL CONCEPTS OF DUE PROCESS. ALSO, IN THE EVENT OF A WAIVER, WOULD THE GOG IN THE VIEW OF THE EMBASSY BE AMENABLE TO PERMITTING THE SUBJECT TO BE TRIED IN A U.S. COURT.

5. WE REALIZE THAT ADMINISTRATIVE AND TECHNICAL STAFF ARE NOT IMMUNE FROM CIVIL AND ADMINISTRATIVE JURISDICTION. WE HOPE THAT THIS DOES NOT POSE A PROBLEM; NAVY STANDS READY TO PROCESS SUCH A CLAIM EXPEDITIOUSLY.

6. SUBJECT OF AUTHORITY TO PAY LEGAL FEES IN THIS CASE WILL BE ADDRESSED IN SEPTEL.

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7. FYI: 7 WHITEMAN, DIGEST OF INTERNATIONAL LAW 421-436 DISCUSSES SUBJECT OF WAIVER OF IMMUNITY. BROWN

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